



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 4, 1996

Ms. Michele L. Shackelford
Gibson, Ochsner & Adkins, L.L.P.
701 South Taylor, Suite 500
Amarillo, Texas 79101-2400

OR96-1820

Dear Ms. Shackelford:

On behalf of the Amarillo Hospital District (the "district"), you ask whether certain information is subject to required public disclosure under the Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 101193.

The district received a request for "a copy of any termination agreement between James Taylor and the Amarillo Hospital District." You state that the district "declines to submit any reasons why the information should be either withheld or released." Counsel for Mr. Taylor, Mr. Russel L. Robinson, has stated in a letter to your firm that the requested agreement is not subject to public disclosure because the disclosure would breach the confidentiality provisions of the agreement. This office offered Mr. Robinson an opportunity to demonstrate that the requested agreement is excepted from required public disclosure pursuant to an exception to disclosure in the act. We have received no response from Mr. Robinson.

A governmental body may not contract to keep information confidential, even if the governmental body does so by means of a settlement agreement. *See* Open Records Decision No. 114 (1975); *but see* Gov't Code § 552.107(2) (agreement excepted from disclosure if court issues order making it confidential), Open Records Decision No. 594 (1991) (promise of confidentiality enforceable if statute authorizes governmental body to make promise). Therefore, the confidentiality provision does not authorize the district to withhold the agreement from public disclosure.

Nor may the district withhold the agreement from the public to protect the privacy of the parties to the agreement. Section 552.101 excepts from required public disclosure information considered to be confidential by law, including information made confidential by judicial decision. This exception applies to information made confidential by the common-law right to privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may

be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.* As we believe the public has a legitimate interest in the agreement, we find that section 552.101 is inapplicable in this instance.

However, section 552.117 of the Government excepts from public disclosure portions of the agreement. That provision applies to the home address, home telephone number, social security number and family member information of a current or former official or employee of a governmental body who has complied with Government Code section 552.024. Section 552.024 contains procedures that allow a public employee to make this information confidential. If, at the time the district received the request for information, Mr Taylor had chosen not to disclose the information in compliance with section 552.024, the district must withhold that information pursuant to section 552.117 of the Government Code. *See* Open Records Decision No. 530 (1989).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 101193

Enclosures: Submitted document

cc: Ms. Dorsey Wilmarth
Assistant Managing Editor
Amarillo Globe- News
P.O. Box 2091
Amarillo, Texas 79166
(w/o enclosures)